

8

TESTIMONY

ON BEHALF OF

COMPLAINANT AND RESPONDENTS.



The City of Philadelphia,

vs.

THE TRUSTEES OF THE ESTATE OF JOHN NAGLEE, DECEASED.

100.00 . 22.91

IN THE COURT OF COMMON PLEAS IN AND FOR  
THE CITY AND COUNTY OF PHILADELPHIA.

THE CITY OF PHILADELPHIA,

*vs.*

PETER A. KEYSER, JOHN NAGLEE, JR.,  
WILLIAM B. HART and ELHANAN W.  
KEYSER.

IN EQUITY,  
No. 13.

*December Term,*  
A. D., 1855.

DEPOSITIONS of sundry witnesses taken in the above case on behalf of the Complainant and Respondents before George Junkin, Jr., the Examiner appointed by the Court for that purpose. See certificate of appointment annexed, marked "Exhibit (V)."

Wednesday May 28th, 1856, 3 o'clock, P. M., Judge Mallery's office.

Present—George L. Ashmead, Esq., Solicitor for the Complainant.

Garrick Mallery and Furman Shepherd, Esqs., Solicitors for the Respondents.



## TESTIMONY ON BEHALF OF COMPLAINANT.

JOSEPH H. SIDDALL, a witness produced by the Complainant, being duly affirmed according to law, deposes and says:—

I am the Surveyor of the Fifth District of the City of Philadelphia. I made this Plan now before me of the mouth of Cohocksink Creek and the adjacent ground, from surveys that had been made previously. I made that Plan October 17th, 1855. Plan annexed hereto and marked “Exhibit (A) G. J., Jr., Exr.”

That Plan, I believe, shows the true position of the old wharves on the south side of the said Creek and of the proposed new wharf on the north side.

I have been a surveyor in that neighborhood for forty-five years.

The Cohocksink Creek was the dividing line between the District of Kensington and the Northern Liberties, prior to Consolidation.

I know the fact that the Cohocksink Creek is a navigable stream; and is and has been used for the purpose of navigation.

The old wharves on the south side of the Creek, have been there as far back as my memory will carry me. I can't say of my own knowledge the course which the stream ran before these wharves were erected. I did not know the stream before.

If the proposed wharf on the north side of the Creek should be built as laid out on the Plan just referred to and marked “Exhibit (A)” and the north line of the old wharf on the south side should be carried out to the Wardens' line as laid out on the north side, it would make the mouth of the Creek less than forty feet in width—it would leave it about twenty-seven feet wide.

*Ques.*—Look at the Plan and say, whether the proposed wharf on the north side runs into, or occupies any part of the public highway of Cohocksink Creek?

*Ans.*—The Creek was made a public highway to its mouth; and it would depend upon where that mouth is, whether it would run into, or occupy the highway.

*Ques.*—Does it run into Cohocksink Creek as a public highway as the mouth is now actually located?

*Ans.*—The mouth is not located down that far until the wharf is actually built.

*Ques.*—Will the proposed new wharf on the north side change the direction of the lines of the mouth of the Creek after it leaves the end of the old pier on the north side?

*Ans.*—Yes, sir; it will.

It is hard to tell where the Creek, or the mouth of the Creek is, as there are no defined limits there.

*Ques.*—Do you know, or are you of the opinion as a surveyor, whether the erection of the proposed wharf on the north side on the lines indicated on that Plan, will narrow the mouth of the Creek, or injure the navigation of the said Creek?

*Ans.*—That will depend upon how the wharf is afterwards built upon the south side. It might interfere with the entering of the mouth of the Creek; but the bend is only about the same as the bend above. A vessel that could pass the bend above, could pass the bend at the mouth or near the mouth.

I never took soundings of the bed of that Creek. I do not know whether the deepest part of the bed of the Creek extends upwards or downwards after it leaves the old wharf.

*Ques.*—Do you know anything about the presentation and rejection of a former Plan for this wharf by Messrs. Naglee and others to the Board of Port Wardens?

*Ans.*—I do not.

*Ques.*—If the lines of the public highway of Cohocksink Creek were extended out as they at present run, would or would not the proposed wharf, on the north side, extend over for some distance at the southeast corner of the proposed wharf into said public highway?

*Ans.*—It would project over into the public highway at said corner about twelve or thirteen feet, I think.

The north line of the old wharf at the mouth of the Creek on the South side inclines South of East.

This Plan, now before me, [Copy annexed hereto and marked "Exhibit (E)"] is a Plan of the Cohocksink Creek, made in the year 1808 by Robert Brooke, who was, at that time, the Surveyor of the Northern Liberties. I have had it in my possession for thirty-four years. I got it from his widow. This Plan shows the existence of the old wharf on the south side at that time.

Adjourned to Tuesday, June 3d, 1856, 3 P. M.



*Joseph H. Siddall, resumes :—*

*Ques.*—Do the lines of the old wharves at the mouth of Cohocksink Creek run South of East?

*Ans.*—Yes, Sir; they do.

*Ques.*—If the old lines should be continued straight out into the river, would the navigation of the entrance to the Creek be easier than if the proposed bend should be placed there?

*Ans.*—I can only say that the straighter you keep it, the better it is for navigation.

Cross-examined by Mr. Megarge, for the Respondents—

*Ques.*—Under present legislative authority, how much farther can a wharf be extended out into the river on the North side of the mouth of Cohocksink Creek than on the South side?

*Ans.*—The Wardens' line, on the North, extends out nearly fifty feet further than on the South side of the mouth of the Creek.

*Ques.*—If Naglee's wharf should be extended according to the grant or license of the Port Wardens of Philadelphia, and the property on the south side of the Creek should obtain a grant hereafter to go out to the Port Wardens' line, as now fixed on the South side of the Creek, what will be the width of the mouth of Cohocksink Creek from the North side of the South wharf, so extended, to Naglee's wharf?

*Ans.*—I can't tell, exactly; but I think it will be about forty-two or forty-three feet.

*Ques.*—If Naglee's wharf on the North side of the Creek should be extended according to the grant of the Port Wardens of Philadelphia, what will be the width of Cohocksink Creek from the end of the North side of the present South wharf to Naglee's wharf?

*Ans.*—The proposed extension of Naglee's wharf will not affect the width of the Creek from the present termination of the old wharf on the South across to the North wharf, as the said extension commences beyond that point. I believe the width of the Creek from the termination of the old wharf on the South, across to the North wharf, as now made, is a little over sixty feet.

*Question by Mr. Ashmead*—Do the parties on the North side of the Creek claim the right to widen their wharf to forty feet from the end of the present wharf on the South side?

*Ans.*—I should consider they had the right to wharf up to the forty feet line. I do not know whether they claim it.

*Ques.*—Is there any good reason, so far as you know, why the War-

dens' line on the South side of the Creek should not be extended as far out as on the North side?

*Ans.*—I do not know any reason why it should not be.

JOSEPH H. SIDDALL.

Affirmed and subscribed before me, this 11th day of June, A. D., 1856.

GEORGE JUNKIN, JR., *Examiner*.

Tuesday, June 3d, 1856, 3 P. M.—All parties present at same place. Mr. Siddall not being present, his cross-examination is postponed to next meeting, and Complainant calls Charles Rugan.

CHARLES RUGAN, a witness produced by Complainant, being duly sworn, deposes and says:—

I was a member of the Board of Port Wardens of the City of Philadelphia, at the time when an application was made by the Messrs. Naglee for permission to erect a wharf at the mouth of Cohocksink Creek. This was the first application made by them.

I believe a majority of the Board was opposed to the application, because it would interfere with the ingress and regress at the mouth of the Creek. I think this application was made about four years ago.

I was a member of the Board about five years or more. It is upwards of two years since I quit the office—probably two years this last May.

[Witness looks at certified record of the Board of Wardens.]

I think this was the application—November, 1853. I was a sea Captain by profession. I recollect the time when the whole of the North side of the Cohocksink Creek at its mouth was overflowed with the tide. I think this was in 1805. I do not recollect the wharf on the South side there then.

*Ques.*—Would the navigation of Cohocksink Creek be as easy at its mouth, if the lines were to run in the manner proposed on the Plan (A), as if they ran straight out on the old lines?

*Ans.*—I think the lines turned in the way proposed by the new wharf on the Plan, will make the navigation of the Creek less easy than if they ran straight out on the old lines—when there is a bend you can't get in so easy as if the Creek were straight. That is a self-evident fact. I don't know anything about the soundings, except that on the South side there is evidently a heavy deposit—I speak of about four years ago.

I have no recollection that the Board passed any resolution, but I know that the disposition of the Board was to narrow down the size of the



width of the wharves within fifty feet, where it could be done. That was in order to have more water room and less wharf room. The great difficulty of our port, at least the old part of it, was, that there was too little water room in proportion to the landing or wharf room. On and off I followed the water as a profession from 1807-1808 to 1828 or 1829. My age is now sixty-nine years.

Cross-examined by F. Sheppard, Esq.—

I live in the Thirteenth Ward, Spring Garden. I formerly resided on Eighth street, above Cherry street. I removed from there in December last one year. I did not reside in the Northern Liberties. I never resided there. I have a faint recollection of the Plan which was first before the Port Wardens of which I have spoken. It had two piers and a dock between. It was different from the one on this Plan (A).

This Plan [produced by Respondents, and marked (B),] is the Plan which was rejected by the Board of Port Wardens in 1853, I think. I have had no occasion to observe the sweep of the river at the end of the pier—Naglee's pier—but the Southern side I have.

Tributary streams entering a river do not generally enter with their mouths up stream.

In answer to Mr. Ashmead, witness says:—

My impresssion is that the old lines run South of East at the mouth of the Creek.

CHARLES RUGAN.

Sworn and subscribed before me, this 3d of June, A. D. 1856.

GEORGE JUNKIN, JR., *Examiner*.

Mr Ashmead, for Complainant, produces in evidence a certified copy of the full proceedings of the Board of Port Wardens of the City of Philadelphia, in the first and second applications of Naglee and others, for the erection of a wharf at the mouth of Cohocksink Creek, marked "Exhibit (D)."

Mr. Sheppard, for Respondents, objects to the offer.

Adjourned to Wednesday, June 11th, 1856, at 11 o'clock, A. M.

Wednesday, June 11th, 1856, 11 o'clock. Met. Parties present. Examination of Mr. Siddall resumed and concluded.

Tuesday, June 17, 1856, 3 P. M., met. Present, G. L. Ashmead and F. Sheppard, Esqs.



JOHN EVANS, a witness produced by the Complainant, being duly affirmed, says :

I am almost sixty-five years old. My occupation has been counting lumber. I have been engaged with lumber for forty years within musket shot of where I now am, at No. 49 Green Street below Second Street, in this City. That is within a couple of squares of Cohocksink Creek. I lived in that neighborhood for upwards of forty years. I have during that time followed the business connected with lumber on Cohocksink Creek. I kept a lumber yard on the Creek for seven years—on the wharf on the South side of the Creek at its mouth. I have been counting lumber there along the wharves since the year 1835.

I have a recollection of Cohocksink Creek for about forty years. During all that time that Creek has been used for the purposes of navigation. Coal, lumber, sand and building-stone have passed up and down it, constantly, in the proper seasons. As to coal, I mean since it was introduced.

*Ques.*—From the experience and observation that you have had and made, would or would not a bend made at the mouth of Cohocksink Creek, on the line of the proposed new wharf on the North side of the Creek, make the Creek less easy of access, and consequently less navigable?

*Ans.*—If it is to reduce the Creek in the manner in the Plan, it would make a bad business. If the wharf on the South side is to be continued out on a straight line, the same distance as the proposed new wharf on the North side, that would be a bad business. There is a vast deal of water comes down this Creek at times, and sweeps every thing before it, and boats might jam in there at the mouth, and it would make a terrible overflowing. I have seen the water rush out of the mouth of that Creek half way across the Delaware—that was in 1832; you could see the muddy water. There were oyster boats in there at the time, and it swept them out.

*Ques.*—Even supposing that the line of the wharf on the South side, should be continued out in the same direction as the line of the proposed new wharf on the North side, would it or would it not, create an additional bend at the North of the Creek?

*Ans.*—It appears so by the Plan.

*Ques.*—With that bend in the mouth of the Creek, would or would not the mouth of the Creek be as easy for access and navigation, as if it ran straight out and there were no bend in it?

*Ans.*—This would be my opinion. I should think that straight entrances into docks and creeks would be better than crooked ones; and

again, I think the effect would be to create a mud deposit at the North-Eastern end of the South wharf, as the water naturally would run straight out, and being no current at that corner, the water would deepen on the North side and create the mud deposit at the said corner. I mean that the mud deposit would be where I have marked the triangle in pencil mark on the Plan marked "Exhibit (A)."

Cross-examined by Mr. Sheppard.

I was requested to come here by Mr. Henry Stiles who sits here with us. I have been acquainted with him for a long time.

Cohocksink Creek is navigable up as far as the Gas Works now, I think. They take their coal up to the Gas Works and to some coal yards. It is not navigable beyond Front Street, I think. The width of the Creek is said to be forty feet wide. The stone bridge at Beach street is forty feet wide, between the abutments.

I have made no examination of the wharves at the mouth of the Creek. I have been there recently counting lumber; but I made no examination of the wharves. It is an old familiar spot. There was an island in the Creek below the stone bridge, up by Naglee's wharf, which we called in honor of Mr. Samuel Megarge, "Megarge's Island." It was a deposit of mud, just what I think would be made at the triangle above referred to, if this Plan is carried out.

I never knew of any difference in the Wardens' line on the North and South of that Creek. I can't say that I know the size and dimensions of the new wharf of Mr. Naglee, but I saw something on the Plan which I did not notice as I was looking at my triangle. I can't tell to what extent the proposed new wharf would diminish the channel of the Creek.

*Ques.*—Have not your opinions as to the obstructions that would result from the proposed wharf, been based upon a future extension of the wharf at the South of the Creek?

*Ans.*—No, I think not. My opinion is formed from looking at creeks, and knowledge of wharves, &c. I recollect a case in point: the wharf next below the one on the South side of the Creek, being built out beyond the said South wharf, left a dock which filled up very rapidly with mud.

JOHN EVANS.

Affirmed and subscribed before me, this 17th day of June, A. D., 1856.

GEORGE JUNKIN, JR., *Examiner.*



Mr. Ashmead offers in evidence a License from the Port Wardens' office to John Stiles, dated March 17th, 1803, to extend his wharf on the south side of Hillegas's (then) present wharf, being the wharf now and then on the South side of Cohocksink Creek, on a straight line with said Hillegas's wharf, and no farther. [License hereto annexed marked "Exhibit" (F.) G. J., Jr., Exr.]

Adjourned to meet at Judge Mallery's office on Tuesday, June 24th, 1856, at 2 o'clock, P. M.

---

Tuesday, June 24th, 1856, 2 o'clock, P. M., met. Adjourned to meet same place on Monday, June 30th, 1856, at 2 o'clock, P. M.

---

Monday, June 30th, 1856, 2 o'clock, P. M. Met and adjourned to Tuesday, November 11th, 1856, at 3½ o'clock, at 104 Walnut street.

---

Tuesday, November 11th, 1856, 3½ o'clock, P. M., 104 Walnut Street. Present, George L. Ashmead, Furman Sheppard, Esqs. Adjourned to same place, November 25th, 1856, at 3½ o'clock, P. M.

---

November 25th, 1856, met and adjourned to Wednesday, December 3d, 1856, at 3½ o'clock.

---

December 3d, 1856, met. Present, Mr. Sheppard and Ashmead, and parties.

GEORGE SIMPSON being duly affirmed, deposes and says :

I am an owner of property on Cohocksink Creek. I carry on business on my property there; and have done so for thirty-seven years in the same place. My property runs right down to the Creek—it is about two good squares from the mouth of the Creek—nearly three squares. I have during the thirty-seven years had daily opportunity of observing the business done on the Creek.

*Ques.*—Is there, and has there been considerable business done on the Creek?

*Ans.*—Yes, sir.

*Ques.*—Mention generally what kind of business?

*Ans.*—Formerly rafts used to come there in the Spring and Fall, when the water was so clear that you could drink it—now a rat could'nt drink it. Then came the coal arks. Lehigh coal arks came up there to land coal, and the arks to be broke up. Next came the coal boats, and are continually landing coal on the various wharves on the Creek. The following coal yards are on the Creek above Brown street bridge, viz :—Hance & Rowland, who land about 3000 tons a year, I suppose. This is on the East side of the Creek. Then comes Glenat's omnibus stable, which sends away about a boat load of dung a week. Then Trotter & Dixon, coal dealers, who have 300 feet on the Creek. I suppose they land 20,000 tons a year.

[Mr. Sheppard objects to the suppositions of the witness.]

Next is William B. Elliott's coal yard, then John Wilson's coal yard. That is all on the East side, that I know of.

On the West side of the Creek, Hance has a coal yard. Above that, Robert P. Gillingham has a yard for coal, which belongs to the Hazleton Coal Company. Next comes my wharf—sometimes we land coal there, but not often. I have 110 feet on the Creek. Next comes Keen & Coates' Tan yard, about 200 feet on the Creek. Next Stokes' property with two coal yards on it. Then comes the Gas Works. These are all from Brown street bridge to Frankford Road. There were some above Frankford Road, but there are no coal yards there now.

*Ques.*—What is your business?

*Ans.*—Skin dresser and wool dealer.

*Ques.*—Do these coal yards and other places of business you have spoken of on the Creek, as far as you have observed them, appear to carry on an extensive business?

[Mr. Sheppard objects to the question as leading.]

*Ans.*—They do.

*Ques.*—Are there any wharves for the accommodation of this business you have spoken of between Brown Street and Frankford Road?

*Ans.*—It is all wharf from Frankford Road to Brown Street. The different businesses I have spoken of are carried on on those wharves.

*Ques.*—Do you know the rents of any of these places of business?

*Ans.*—I know the rent of the Hazleton Coal Yard. It is \$1,450 a year. I only have this from hearsay.

[Mr. Sheppard objects to any further statement of rents from hearsay.]



Mr. Hampton pays \$350 rent for ten feet on the Creek for landing purposes. I know this of my own knowledge. I don't know of any other rents except from hearsay.

*Ques.*—Is there any business done from Brown street to the mouth of the Creek?

*Ans.*—Oh! yes, sir. A great deal of lumber, coal, sand, and some grain landed. A great deal of wood on both sides of the Creek.

*Ques.*—State whether to your knowledge there is or is not considerable navigation on the Creek.

*Ans.*—There is. The depth of water is from five to seven feet.

*Ques.*—Would the extension of Mr. Naglee's pier, as proposed by the Defendants, destroy the navigation of the Creek?

*Ans.*—That is a thing I cannot tell anything about.

Cross-examined by Mr. Sheppard.

*Ques.*—Who requested you to attend here?

*Ans.*—Mr. Edward H. Stokes. He told me at the request of the Lawyer.

*Ques.*—That is the same Mr. Stokes you have mentioned as being a property owner on the Creek?

*Ans.*—That I don't know. The Stokes I mentioned is of German-town. Windham H. Stokes.

*Ques.*—Has the Mr. Stokes who requested you to attend here any connection that you know of, and what, with property on the Creek?

*Ans.*—I don't know what connection he has, any more than he told me he was agent or trustee for some property there.

*Ques.*—Has any one else spoken to you on the subject of this suit, and if so, who?

*Ans.*—No one.

*Ques.*—When did you first know of the existence of this suit?

*Ans.*—About a month or six weeks ago.

*Ques.*—About what year was it that the rafts used to come up the Creek?

*Ans.*—From 1818 to 1826.

*Ques.*—Did they come in large or small quantities?

*Ans.*—Large quantities. Some time the Creek was completely filled with them.

*Ques.*—Can you state the depth of water, or average depth of water in the Creek at that time?

*Ans.*—The average was from four to seven feet, according to the variation of the tides. The water is as deep now as it was then.

*Ques.*—Is the Creek itself as deep and as free from mud and other obstructions as it was then?

*Ans.*—There is more mud comes down in the time of a fresh, but it washes away. It is as deep as it was thirty-seven years ago.

*Ques.*—Do I understand you then to say, that with the exception of the mud of which you have just spoken, the depth of water is the same, and the channel is as unobstructed now, as it was thirty-seven years ago?

*Ans.*—Yes. Then it was not wharfed on one side, and the water flowed over the adjoining lots, but the channel is as deep.

*Ques.*—Will you please state your means of knowledge as to the rent paid by Mr. Hampton?

*Ans.*—He told me himself.

*Ques.*—Is that what you meant, when you said in your examination in chief, “I know this of my own knowledge?”

*Ans.*—Yes, sir, from his word, and they were going to raise his rent.

*Ques.*—State, to the best of your ability, the size and extent of his lot?

*Ans.*—It is ten feet on the Creek and widens up to thirty-six feet on Front street. It is about one hundred and forty feet from the Creek to Front street. I don't say positively.

*Ques.*—Please state in what way, if at all, Keen and Coates make use of the Creek?

*Ans.*—I have seen coal landed at their wharf by Charles O. McCord. I have seen leather landed there, and I have seen bark landed there.

*Ques.*—Do the coal and bark relate to their business as tanners?

*Ans.*—Yes, sir.

*Ques.*—You mean the coal and bark which you said you saw landed, do you?

*Ans.*—Yes, sir.

*Ques.*—How frequently have you seen coal, bark or leather landed there?

*Ans.*—I have seen coal landed there this summer. Leather I have not.

*Question repeated.*

*Ans.*—I can't tell how frequently.

*Ques.*—How frequently did you see coal, bark or leather landed there last summer?

*Ans.*—Can't tell, if at all last summer.

*Ques.*—The rafts which you say formerly entered the Creek were taken to pieces, were they not, and the lumber stored on the wharves?



*Ans.*—Yes, they were landed there. The lumber taken off and put on the wharves, by Robert Wallace, Downs & Gillingham, and others.

*Ques.*—The arks also were broken up after they had entered the Creek, were they not?

*Ans.*—Yes, landed first and broken up afterwards.

*Ques.*—State in what the “navigation on the Creek” consists of, which you have spoken in your examination in chief?

*Ans.*—In the first place there was rafts, then arks, then coal boats, and I have seen lumber boats, and bituminous coal boats. I have seen them above the Frankford Road. I have also seen sloops strike-masted and schooners without masts.

*Ques.*—What was the tonnage of the sloops and schooners, or their draught?

*Ans.*—I have had them come up to my yard with twenty to twenty-five cords of wood, and draw about three foot of water.

*Ques.*—Is or is not the bed of the Creek bare at low water?

*Ans.*—Not entirely. There is always a running stream.

*Ques.*—Please state the width and depth of that running stream?

*Ans.*—The Creek is forty feet wide, by Law. The running stream opposite my yard, is from six to eight feet wide and from three to six inches deep, according to the dryness of the weather—sometimes at the lowest tide it will run two foot deep a day or two after a freshet, before the ponds get dry and the water runs off.

*Ques.*—Do you say, that at low water the average width of the running stream opposite your yard is from six to eight feet, and the depth from three to six inches?

*Ans.*—Yes. To-day opposite my yard the stream is twenty feet wide, at low water.

*Ques.*—Is not that in consequence of the recent rains?

*Ans.*—Yes, I presume it is.

GEO. SIMPSON.

Affirmed and subscribed before me, this third day of December 1856.

GEO. JUNKIN, JR., *Examiner.*

*Complainant here closes.*

Adjourned to Wednesday, December 10th, 1856, at 3½ o'clock, P. M.

---

Wednesday, December 10th, 1856, 3½ o'clock, met. Parties present.

## TESTIMONY ON BEHALF OF THE RESPONDENTS.

ROBERT P. GILLINGHAM, a witness produced and examined on behalf of Respondents, being duly affirmed, deposes and says :

I am in business on the Cohocksink Creek—in the coal business. I have been in business on the Creek, in the coal and lumber business, most of the time since 1840—say, with the exception of two or three years. My front on the Creek is about one hundred and seventy-five feet.

A number of years ago I was employed on the wharf at the south side of the mouth of the Creek. It was known as the “Stiles’ wharf.” From 1836 to 1845, “The Hazleton Coal Company” were the Lessees of that wharf, and during a part of that time I was in their employ.

I have no recollection when that “Stiles’ wharf” was built—it was before my time—but I have no doubt from the appearance of things, that that wharf has been built across the channel of the Creek. I draw my conclusions from the appearance of the Creek—from its general appearance it bears evidence of its having been run across the Creek. For the purpose of getting a front on the river, has been the cause of it, if such has been the case. I may add, that without that, judging from the appearance, there would have been no river front—it would have run to a point before it struck the river on the South side of the Creek, the “Stiles’ wharf.” This encroachment is on the North side of the Stiles property and on the South side of the Creek, running from the Southwest to the Northeast. The bearing of the Creek now is Northwardly, more than, from present appearances, it was originally. The manner in which this change of bearing has occurred, is the way in which the “Stiles’ wharf” has been located. I may say, that within my recollection, the lines of the Creek have been varied to suit the convenience of property owners. The location of the South wharf has undoubtedly had the effect of throwing the water on the property on the North side, and of obstructing the channel of the Creek, by causing the deposit of matter which flows through the channel of the Creek.

I am familiar with the situation of the “Stiles’ wharf”—fully. At a certain distance from the river front, I can’t tell the number of feet, the “Stiles’ wharf” turns or bends to the Northward.

At the mouth of the Creek it is bare at low water. The water all runs out. There may be a few inches. It is mud. That, of course, prevents all ingress and regress at that state of the tide. At high tide the depth



of the water in the Creek may average five feet, when the winds are favorable. At some seasons of the year—now, for instance—there are scarcely two feet of water in the Creek. The Creek is now filled with loaded boats for a distance of two squares from the mouth, which have not floated for the last week or ten days, for want of water. These are both waiting to go in and to come out.

I have, I suppose, a hundred coal boats a year coming to and going from my wharf. At times they have great deal of difficulty in getting an entrance at the mouth of the Creek. This difficulty is caused by the exposure of the coal boats, as they are dropped from the tow boats, to the winds and floods.

I have been made acquainted with the projected improvement of the North wharf at the mouth of the Creek. I believe the proposed wharf will be of the greatest advantage to the Creek as a navigable stream. It will not narrow the mouth of the Creek, neither will it obstruct the navigation of it, in my opinion. There is a deposit or sediment at the mouth of the Creek at present—a great quantity. I think the properties on the Creek in a few years will not be worth the taxes, unless some improvement like this is matured. I think it is actually necessary in order to preserve a value to the property, from the fact, that the Creek, as at present situated, has been filling up yearly, and becoming more difficult to navigate. It has been filling up with deposit—sediment. The proposed improvement will no doubt offer a protection and safe harbor to boats when cast loose from the tow boat; and I think, from natural conclusions, it would remove the sediment from its present bed or location into deeper water and improve the channel—deepen the channel and improve the navigation.

As a general thing, boats in entering the Creek haul to or fasten to the “Stiles’ wharf,” for this reason, that an entrance can only be obtained at flood or full tide, and by laying on the South side they have the advantage on entering, as the tides all flood Northward. This necessity of hauling to at the South wharf would be entirely obviated by the proposed extension of the North wharf, because they would find better shelter under the North wharf as proposed to be built. My idea is, that that North wharf would operate as a breakwater. There are hundreds of thousands of dollars’ worth of property invested on this Creek, and we, who are interested in it, require a protection at the mouth of the Creek similar to the one proposed, to give value to our property.

I believe the boats that have to lie to at the South wharf are charged wharfage. I refused to pay it myself, but I believe the captains of the boats do pay it.



I occupy the property on the West side of the Creek, immediately North of Poplar street. It is the property known as the "Hazleton Coal Yard." It is worth about \$2,000 rent a year. That is offered for it, but it is not for rent. I do business there to the amount of about \$50,000 per annum. The property is worth about \$30,000, I presume. The value of this property has heretofore depended entirely on the free and obstructed navigation of the Creek to the river Delaware, and the communication therewith, so far as the coal business is concerned.

*Ques.*—Would or would not, in your judgment, the proposed extension of the North pier obstruct the free and convenient use of the Creek by the persons having occasion to use the same?

*Ans.*—It would not.

*Ques.*—As a property occupant upon the Creek, are you willing or unwilling that the proposed improvement should be made?

*Ans.*—As such, I am both willing and anxious that it should be made.

*Ques.*—Would the tendency of the improvement, if made, be, in your judgment, beneficial or injurious to the property on the Creek?

*Ans.*—It would be beneficial to all the property on the Creek which depends on the free navigation thereof for its value.

*Ques.*—Do you know of any public right, or interest, or convenience, which, in your judgment, would be destroyed, or injured, or impaired by the operation of the proposed improvement if made.

*Ans.*—I know of none whatever.

Cross-examined by G. L. Ashmead, Esq.

I have carried on business for myself on the Creek for seven years. I am approaching thirty-four years of age. I suppose I have been intimately acquainted with that Creek for sixteen years—as intimate as a boy is with his Primer.

*Ques.*—Have you not heard that that South wharf was built before you were born?

*Ans.*—I think I have within the last hour or two.

*Ques.*—When you say that the South wharf was built across the channel of the Creek, do you mean to say that you know this from your own personal knowledge, or that it is only from supposition and inference?

*Ans.*—Of my own personal knowledge I know nothing at all about it; but am governed by the general appearance of the said wharf and the lines of the Creek.

*Ques.*—Have you any personal knowledge of the direction in which the mouth of the Creek formerly ran, other than the present direction?



*Ans.*—I have no further knowledge than that the water now deposited into the River from the Creek on the ebb of the tide, flows in a different direction from what I think it would on a strictly natural course of the Creek.

*Ques.*—Do you know whether the course of the Creek at its mouth runs South of East, or North of East?

*Ans.*—I do not, sir, precisely. I should think it ran North of East.

The river Delaware in discharging its tides, as the Creek is at present constructed, in consequence of the angle on the South wharf, throws its water into the mouth of the Creek, which is contrary to a course of nature—by that I mean, that the general inclination of the outlets of streams into a river is Southwardly.

*Ques.*—You have said, that the “Stiles’ wharf” would have run to a point if the line of the property had been carried out, and the River front would thereby be lost—Would not the same result, or nearly so, be the case with the North or Naglee’s wharf, if the line of that property were carried out on the proposed new wharf?

*Ans.*—I think not. I think it would run out its full width, or nearly so. I see by looking at the plan (C) that there would, by following the North line of the Creek, be cut from the proposed wharf a corner.

*Ques.*—Would you not consider, that the erection of a wharf extending into the channel of the Creek twelve or thirteen feet, would injure the navigation of the Creek?

*Ans.*—I would say, that under some circumstances it would—under most circumstances it would. In this case, I do not consider the projection into the Creek, but into the River.

*Ques.*—Do you not know the fact, that the proposed new wharf on the North side would project into the channel of the Creek, and into the public highway thereof, as now established by law, some twelve or thirteen feet?

[Mr. Sheppard objects.]

*Ans.*—I do not know it; and do not believe it to be an extension into the Creek, but into the River.

*Ques.*—You have said, that the erection of the proposed new North wharf would tend to remove sediment deposited at the mouth of the Creek—Would not a mud dredge answer the same purpose? and without possible injury to the property on the South?

*Ans.*—A mud dredge would certainly remove the sediment; but, as at present constructed, the mouth of the Creek is liable to be filled by every

freshet. The mud has frequently been removed from the bed of the Creek by private enterprize; but invariably filled again by the next freshet. We never could get the City to do anything for us toward keeping the channel clear.

*Ques.*—Do you know the average depth of the channel of that Creek sixteen years ago, and whether at this time it is not as deep, or deeper than it was then?

*Ans.*—Sixteen years ago I was in business at the mouth of the Creek, and was not so well acquainted with the character of the navigation at a distance from the River as now, but I believe it to have been much deeper sixteen years ago than at the present time.

*Ques.*—If you were not acquainted with the depth of water at that time, why do you say you believe it to have been deeper?

*Ans.*—I speak from general recollection. My business did not then require me to notice the depth of the water as now.

*Question by Mr. Sheppard.*—Does the City of Philadelphia own any mud dredges?

*Ans.*—None to my knowledge, and have never employed any at the Creek.

I know George Simpson. He does not use the Creek for the purpose of navigation; but only for washing sheepskins.

R. P. GILLINGHAM.

December 10, 1856.

Affirmed and subscribed before me, this tenth day of December, 1856.

GEO. JUNKIN, JR., *Examiner.*

Adjourned to December 18th, 1856, at 3½ o'clock, P. M.

---

Met December 18th, 1856, at 3½ o'clock, P. M. Present, Mr. Ashmead and parties. Adjourned to Wednesday, December 24th, 1856, at 3½ o'clock, P. M.

---

Wednesday, December 24th, 1856, 3½ o'clock, P. M. Met. Present, Mr. Sheppard, Mr. Ashmead, and parties.

---

WILLIAM B. ELLIOTT, a witness produced by the Respondents, being duly affirmed, says:

I am a coal dealer; a retailer of coal. My place of business is on the Cohocksink Creek. I have in all about two hundred and three (203) feet front on the Creek. I am owner of the ground. I have been owner



about ten (10) years of a portion of it, and of the other not so long. I suppose I am about two squares from the mouth of the Creek—in the neighborhood of eight hundred or a thousand feet (800@1000). I suppose my wharf would rent for one thousand dollars (\$1000). The one adjoining me rents for that, and it is considered low, and when their lease is up they can't get it for the same rent again. Wharves are scarce.

I have conducted business on the Creek for thirteen years and a half. I am interested as owner on both sides of the Creek. I am now a member of the Board of Wardens, and I have been in the Board one year last June.

I am acquainted with the plan of the proposed Pier to be erected at the mouth of the Creek on the Naglee Estate. I was a member of the Board of Wardens when the application was made for permission to erect it. There was a Committee appointed to examine the premises. I was a member of that Committee. The rule of the Board is, that the Applicant must notify the owners of adjoining properties, and by advertisement in the public papers. The Board generally receives vouchers from the Applicants that they have given the notices required. The rule of the Board is, that these notices must be in writing, and the advertisements must be inserted two, or three times—I do not recollect which. There was no exception to this rule in the present case—not to my knowledge.

[Mr. Ashmead objects to this mode of examination to show a notice, asserting that no notice was ever given to the owners of properties adjoining, especially to Mr. Stiles, the owner of the South wharf; and that if notice is to be proved, it must be proved in the usual and regular manner.]

Mr. Sheppard objects to the regularity of allegations of fact by counsel under the form of objections to evidence.]

*Witness resumes.*

*Ques.*—Please state what was done by the Committee with reference to the examination of the premises, or whether any such examination took place.

[Mr. Ashmead objects, that the only proper evidence of the proceedings of the Committee, would be the minutes of the Board of Wardens or of the Committee.]

*Ques.*—Do the Committee keep minutes?

*Ans.*—Not to my knowledge—the Board does.

*Ques.*—Please answer the preceding interrogatory?

*Ans.*—An examination did take place of the premises by the Committee. They reported favorable to the extension of the Pier. Their examination took place on the premises.

The Committee consisted of three. They were unanimous in their recommending the granting the application.

The subject was considered in the Board of Wardens after the report of the Committee. Such is always the case. The Board do not consider themselves bound by the report of the Committee—not at all. The Plans are always at the office. The Plan was examined by the Committee and by the Board. The Committee had the Plan with them when they viewed the premises. They always do so.

*Ques.*—Can you state whether the Board was unanimous in adopting the report and recommendation of the Committee?

[Mr. Ashmead objects, that the only proper evidence on the subject are the minutes of the Board.]

*Ans.*—There was no objection, to my recollection.

*Ques.*—Will you state whether or not any remonstrances, either verbal or in writing, were made known to the Committee at the time of their examination made upon the premises, or were communicated to the Board of Wardens?

[Mr. Ashmead renews his objection.]

*Ans.*—I don't think there was previous to the Committee meeting. At the time of the meeting of the Committee or immediately after, Mr. Henry Stiles and Mr. Edward H. Stokes were at my office, and sent for me, and then stated that they had not received any notice of the application. We then went down to the premises and there the objection was renewed—when answer was made by one of the members of the Board of Wardens, that they were not the adjoining owners—that the City had been notified. This remark was made by Mr. Elhanan W. Keyser.

*Ques.*—State whether there was any verbal or written remonstrance by any other person or persons, except, as you have said, by Mr. Stiles and Mr. Stokes?

[Mr. Ashmead renews his objection.]

*Ans.*—Not to my knowledge.

*Ques.*—If there had been, would you likely have known it?

[Mr. Ashmead objects.]



*Ans.*—I would. I don't think there was any. There was none on behalf of the City of Philadelphia.

*Ques.*—Please state whether or not, in your judgment, as an owner of property on Cohocksink Creek, the proposed extension would or would not injuriously affect the interests of property owners on said Creek, and persons doing business thereon?

*Ans.*—I think it would be an advantage to the Creek to have the Pier extended, as it would deepen the mouth of the Creek and thereby let boats enter much sooner than they can now, as it would afford a harbor in case of a Northeast storm. I don't think it would be any disadvantage to property owners on the Creek at all.

*Ques.*—Would or would not the proposed extension, in your judgment, obstruct the free and convenient use of the Creek by persons having occasion to use the same?

*Ans.*—I do not think it would.

*Ques.*—As a property owner upon said Creek, and a person largely interested in the same, are you willing or unwilling that such improvement should be made?

[Mr. Ashmead objects to the individual views of the witness as not being proper testimony.]

*Ans.*—I am willing that it should be made.

*Ques.*—Do you know of any public right or interest or convenience, which, in your judgment, would be destroyed by the proposed extension?

*Ans.*—I do not.

*Ques.*—What is the use you make of the Creek?

*Ans.*—Coal boats come up to our wharf. About one hundred to one hundred and fifty boats per annum. This year they brought about eight thousand tons of coal.

*Ques.*—State from your examination of the premises, and knowledge of the locality, the position or relation of the Stiles' wharf with reference to the mouth of the Creek?

*Ans.*—The Creek runs contrary to all creeks or streams entering into rivers—to any that I have ever seen—as the tide of the river Delaware, when running down, runs directly in the mouth of this Creek, while with other creeks the tide flows in their mouths when running up, showing that the mouth of the Creek is not in its proper position. The wharf on the South of the Creek forms the barrier to the Creek taking its proper course. It is in consequence of the wharf on the South side extending across the mouth of the Creek. The tide in running down washes

against the North side of the South wharf, thereby showing a tendency to go down—tendency of the Creek or its channel down—while on the North side of the Creek there is no water flows against it when the tide is half out, on account of its not being in the channel of the Creek.

Cross-examined by Mr. Ashmead.

On the upper side of the Creek I own one hundred and eighty feet (180) of ground. On the lower side, twenty-three (23) feet. About eight-tenths (8-10) of my interest lies on the upper side of the Creek—of my ground, I mean. At present the whole of my business is done on the upper side of the Creek, but I look on the other side as the most valuable. My residence merely is on the lot on the lower side of the Creek, and the yard of my residence runs back to the Creek.

*Ques.*—Do you know personally, or of your own knowledge, whether notice was given of the application for a wharf on the North side of the Creek to Mr. Stiles or Mr. Stokes, or any other owners or adjoining owners?

*Ans.*—I have no personal knowledge upon the subject.

*Ques.*—You spoke of seeing a Plan at the time the Committee made their examination—Did that Plan show the lines and improvements on both sides of the mouth of the Creek, or whether the extension on the North side of the Creek of the proposed Pier would extend some twelve or thirteen feet into the Public Highway of the Creek, as laid out by Law?

[Mr. Sheppard objects, because the question assumes the fact in dispute in this cause—the Defendants' Answer denying that there was any extension of the proposed Pier into a Public Highway.]

*Ans.*—That Plan did show the lines on both sides of the Creek. I will not be positive that it showed the improvements on the South side of the Creek. It did not show that the proposed extension of the Pier would extend some twelve or thirteen feet into the Public Highway of the Creek, as laid out by Law.

The only Plan I saw was the one which was before the Board of Wardens.

*Ques.*—Did you ever measure or survey the line of the Creek to ascertain whether the proposed extension of the Pier would extend into the Public Highway of the Creek?

*Ans.*—I never measured or surveyed it; but the Plan in the Wardens' Office was by the Surveyor of the District.



*Ques.*—When that very Surveyor of the District has stated upon his affirmation—that that Plan does show an extension of some twelve or thirteen feet into the Public Highway of the Creek, would you still adhere to your declaration that it does not so extend?

[Mr. Sheppard objects to the question as irregular, inasmuch as it is purely argumentative, and also for the reason, that Defendants' Solicitors do not understand the Surveyor referred to as having so testified.]

*Ans.*—To the best of my knowledge, that plan which we had did not show such extension into the Highway of the Creek.

*Ques.*—You have said that the proposed Pier on the North side would be a convenience to the business on the Creek—Would not the Pier be equally as convenient if it were continued out in a straight line, in the line of the property now on the North side of the Creek, as on the Plan (A)?

*Ans.*—I consider the proposed line is more convenient than the straight line, because in making the mouth of the Creek wider it would be more apt to fill up with dirt.

*Ques.*—Would that be the case, however, if the North and South lines were carried out parallel to each other until both of them stopped at the wharf extension line?

[Mr. Sheppard objects—that the case thus put does not correspond with the present state of things at the premises, and is also altogether an imaginary case.]

*Ans.*—In that case the mouth of the Creek would not be wider, and would not be open to that objection.

*Ques.*—You have said that the mouth of this Creek runs contrary to other creeks on the Delaware—Do you ever recollect that the mouth of this Creek ran in a different direction than at present?

*Ans.*—Never in my recollection.

*Ques.*—Would not sometimes the direction of the mouth of the Creek be determined by the nature of the ground, and not depend solely upon the current of a River into which it might run?

[Mr. Sheppard objects, unless proposed to be followed by evidence that the change was occasioned by the nature of the ground in this instance.]

*Ans.*—I cannot answer that question, for I don't know. I never have seen any that was changed.

*Ques.*—Who were the members of the Committee of Port Wardens who made the examination you have referred to?

*Ans.*—Mr. John Byerly, James H. Stroup and myself.

*Ques.*—Was Mr. Elhanan W. Keyser a member of the Board of Port Wardens at that time—and Was he not also at that time, as well as now, a Trustee of the Estate of John Naglee making the application for the proposed wharf on the North side of the Creek.

*Ans.*—He was. I don't know personally whether he was a Trustee or not.

*Ques.*—Was he present with the Committee at any time?

*Ans.*—He was not until the Committee had made up their mind—to my knowledge. I don't say so positively. He was not present when we examined the premises. He did not try to influence us at all in our judgment in the case by any arguments or representations. I don't remember that he did so before the Board of Port Wardens.

I suppose I had been a member of the Board from four to six months at the time I was appointed on this Committee.

*Ques.*—Did Mr. Keyser make any statement before the Board of Port Wardens as to the channel of the Creek having been diverted from its natural course by the wharves on the Southern side extending North-eastwardly across the natural bed of the Creek.

[Mr. Sheppard objects—because irrelevant, and also for the reason, that such statement would be perfectly consistent with the Complainants' case, inasmuch as the bill filed distinctly avers that such was the case.]

*Ans.*—He never used any arguments to the Board of Wardens, to my knowledge.

*Ques.*—Do you know whether the North line of the wharf on the South side of the Creek runs North of East or South of East, at the mouth?

*Ans.*—I should suppose the line runs nearly East—or little South of East, perhaps.

*Ques.*—Are you aware that a former application to the Board of Wardens of a character similar to the present had been unanimously rejected?

[Mr. Sheppard objects—that the Minutes of the Board are the only proper evidence of the matters inquired about.]

*Ans.*—I am not aware that such was the case.



*Question by Mr. Sheppard.*—What is the relative proportion of your interest on the upper side of the Creek and of the lower side of the Creek?

*Ans.*—I consider my interest on the lower side most valuable.

W. B. ELLIOTT.

Affirmed and subscribed before me, this twenty-fourth day of December, A. D., 1856.

GEO. JUNKIN, JR., *Examiner.*

Adjourned to Monday, January 5th, 1857, at 3 o'clock, P. M.

G. J. JR., *Ex'r.*

---

January 5th, 3½ P. M., 1857. Met, and adjourned to January 9th, 1857, at 3½ P. M.

---

January 9th, 1857, at 3½ P. M. Met, and adjourned to February 19th, 1857, at 4 P. M.

---

Thursday, February 19th, 1857, 4 P. M. Met. Present, Mr. Ashmead, John M. Read, Sheppard.

Adjourned to Wednesday, March 4th, 1857, at 3½ o'clock, P. M.

GEO. JUNKIN, JR., *Examiner.*

---

March 4th, 1857, 104 Walnut Street, 3½ o'clock, P. M. Present, George L. Ashmead, F. Sheppard, and parties.

[Mr. Sheppard calls.]

STRICKLAND KNEASS, being duly sworn, deposes and says, as follows:

I am now by profession a Civil Engineer; and I am the Chief Engineer and Surveyor of the City of Philadelphia, and have been since the City was consolidated. I have been a Civil Engineer for twenty years.

I have looked over a small map that was shown me by Mr. Megargee, showing the position of the proposed Pier on the North side of the mouth of Cohocksink Creek. This map is now before me marked "Exhibit (C) G. J., Jr., Examiner."

*Ques.*—Please state, whether or not, in your judgment, the proposed new Pier, if erected, will have the effect of narrowing the mouth of the highway of Cohocksink Creek?

*Ans.*—If the enclosed space marked "69.6" is to be filled up, or made a solid wharf, then it would narrow it a mere trifle. If the Southern

line of the proposed Pier, were tangential to a circle forty feet radius described from the intersection of the old wharf line of the Northern Liberties and the South line of the Creek, it would not then reduce the mouth of the channel, in my opinion. I have traced the "mere trifle" to which I have referred in lead pencil on the Map. It would be about one foot and seven-tenths, as near as I can obtain from the maps and this scale.

*Ques.*—Please state, whether or not, in reference to the present position of the Pier on the South of the Creek, the proposed extension would narrow the mouth of the Creek?

*Ans.*—No Sir. It would not do it in any case.

*Ques.*—Or would it—still referring to the present position of the South Pier—hinder or prevent a free passage along and out of the Creek?

*Ans.*—It would appear to me, that any vessel that wanted to get into the Creek, would have to get in by *warping*, and it would make very little difference so that it had the width of forty feet.

*Ques.*—Please state, what, in general, is the effect upon such streams as this Creek, of extending the Piers at their outlet?

*Ans.*—It depends greatly upon the direction in which those Piers are extended, in my opinion. If they should be extended at an angle adverse to the current in the stream into which it empties, it would have a tendency of creating slack water in the mouth of the stream, thereby producing a deposit.

If the angle of the extension should be in the direction of the current, so that both the Creek and the main stream should flow together in the same direction, it would tend to clean out the channel, by increasing the current in the small stream.

As relates to the present proposed Pier on the North, I should suppose that it would tend to clear out the channel rather than to make a deposit, as it would throw the direction of the current more with the ebb tide of the river, and prevent a slack water in the mouth of the Creek.

Adjourned to meet Tuesday, March 10th, 1857, at 3 o'clock, P. M.

---

Tuesday, March 10th, 1857, 3 o'clock, P. M. Met. Present, G. L. Ashmead, F. Sheppard, and Parties.

---

STRICKLAND KNEASS, continues as follows:

*Ques.*—Will you please state what, in your judgment, will be the operation of the proposed extension upon the formation of bars or other deposits of sediment, at or near the mouth or outlet of the said Creek?



*Ans.*—I have prepared the Diagram which I now produce marked “Exhibit (K) G. J., Jr., Ex’r,” showing the contour lines for each foot of elevation on the bottom of the River in the neighborhood of the mouth of the Cohocksink Creek—exhibiting the direction of the channels, one from between Petty’s Island and the Jersey shore, and the other between Petty’s Island and the City. The Map has been prepared from soundings recorded on the Port Warden’s Map, prepared in 1856. It also shows the direction of the current out of the mouth of the Cohocksink Creek. The Channels and direction of the Current from the Creek being marked with red dotted lines.

It will be seen from this Map, that the Creek current meets the City channel, the course of the City channel, with an angle pointing up stream of sixty-three and one half degrees ( $63\frac{1}{2}^{\circ}$ ); and the back channel thirty-one and one half degrees ( $31\frac{1}{2}^{\circ}$ ); and is in each instance adverse to the line of the current in the main stream. I consider the tendency of that is, at ebb tide, to reduce the force of the current coming out of the Creek. The water that is brought out of the Creek, it being a channel for drainage, necessarily holds a large amount of matter in solution, and in meeting the adverse current of the main stream, its velocity must necessarily be slackened, giving full opportunity for the matter held in solution to be precipitated in the mouth of the Creek, thereby shoaling the water. If it were desirable to increase the depth of water in the Creek, the first point to arrive at would be, to endeavor to increase the velocity of the water coming out of the Creek at ebb tide. To do this we should endeavor to give that direction to the flow coming out, as will correspond as nearly as possible to the direction of the current in the main stream; and the nearer those directions corresponded, the more uniform would be the velocity in the mouth of the Creek and the main stream. Should the Pier, therefore, be constructed in the line proposed, it would throw the direction of the current between thirty ( $30^{\circ}$ ) and forty ( $40^{\circ}$ ) degrees more Southwardly than the present direction, and very near at right angles to the channel in the River, which I consider would be advantageous.

If the Pier is built as proposed, and the Port Wardens should direct that all the extensions of wharves between the mouth of the Creek and the next angle of the wharf line on the South, be constructed at right angles with the wharf line, the injury to the adjoining properties I should not consider would amount to anything.

I might add, that, for the purpose of showing the advantage of two meeting currents to meet at as small an angle as possible, an experiment has been made with a fifteen (15) inch pipe, two hundred and thirty-five

feet (235) in length, so arranged that the upper end of the pipe was constantly full without additional head, and with air-holes placed in the pipe so as to prevent the compression of the air having any effect upon it—the sectional area of the water delivered by this pipe was carefully measured, after which eight (8) junctions of three (3) inches in diameter with a proper curve down stream were made—when the section of outlet was again measured, and, owing to the increased velocity, it was found unchanged.

*Ques.*—I understand you then to say, that, in your opinion, the useful effect of the Creek as a drain will be much increased by the proposed extension?

*Ans.*—I believe it would be.

*Ques.*—Will you please say, whether or not, from your examination of the various Plans in evidence, and from your other knowledge, the position of the bed of the Creek has, in your judgment, been altered, or the direction of its channel diverted, by the location of the South wharf at the mouth of the Creek?

*Ans.*—Judging only from the present direction of the last bend, which is, as before stated, in an up stream direction to the main River, I should think it was not on its original bed. The change has been, I should judge, by changing the direction Northwardly.

*Ques.*—Do you consider the proposed Pier in any sense as constituting a nuisance in said Creek or Highway?

[Mr. Ashmead objects to the question asked, because it is as to what constitutes a nuisance in a legal point of view, and also because the question does not state the fact, that the proposed wharf will occupy in fact part of the Public Highway.]

*Ans.*—I don't understand exactly what you mean by a nuisance. It will not interfere with the free flow of the water from the Creek—rather improve that. Nor can I see that it will interfere or increase the difficulties, seriously, of the navigation.

*Ques.*—Or affect injuriously the property on the Creek?

*Ans.*—Do you mean the property above?

*Reply.*—Yes, on the Creek, above its mouth.

*Ans.*—I cannot see that it would.

*Ques.*—Do you, as an Engineer or public officer, see any reason of a public character for preventing the erection of the proposed Pier?

[Mr. Ashmead objects, still upon the ground, that it does not include the fact of its invasion of the Public Highway.



Mr. Sheppard objects to the regularity of the foregoing objection.

Mr. Ashmead replies, that all questions of that kind put to a public officer, ought at least to bring to his notice matters affecting public interests.]

*Ans.*—As an Engineer, speaking only upon its effects upon the currents, and supposing that the opposite corner should not be covered by a wharf, I mean the space marked “69.6” X “38.11.” I can then see no objection to the position of the Pier. As a public officer, I am not prepared to reply.

Adjourned to Wednesday, March 18th, 1857, at 3 o'clock, P. M.

---

Wednesday, March 18th, 1857, 3 o'clock, P. M. Met. Present, Mr. Sheppard, Ashmead and parties.

STRICKLAND KNEASS continued.

Cross-examined by Mr. Ashmead.

*Ques.*—Were you called upon by the Respondents in this case in your professional capacity as Engineer or Surveyor?

*Ans.*—As an Engineer and Surveyor—Civil Engineer—I was.

*Ques.*—In compliance with their request did you act for them as such?

*Ans.*—Yes, Sir. Entirely as Civil Engineer only.

*Ques.*—If the line of the South wharf at the line of Cohocksink Creek were to be carried out to the present wharf line in its present direction, would it not meet and intercept, long before it reached the wharf line, a line drawn from the proposed North wharf in the same direction with the proposed North wharf to the present wharf line?

*Ans.*—It certainly would—understanding by the wharf line the one established on the 4th of December, 1856, and as shown on the Plan, marked “Exhibit (A).”

*Ques.*—Have you marked on the said Plan the present wharf line and put a certificate of its accuracy on the Plan?

*Ans.*—In my official capacity, as Chief Engineer of the City, I did.

*Ques.*—Would not the line of the said proposed North wharf drawn out to said present wharf line extend entirely beyond the face of the old wharf at the South of Cohocksink Creek, at its mouth?

*Ans.*—It would—if by the old wharf line you mean the line marked “43 feet” or “38.11.”

*Ques.*—If the owner of the wharf on the South of Cohocksink Creek at its mouth, should desire to extend his wharf out to the present wharf line, would he not be obliged to change the direction of his lines to correspond with the lines of the proposed Pier on the North, in order to preserve his front? I mean from the North point of the line marked “38.11,” and would not that overlap his neighbor’s wharf on the South?

[Mr. Sheppard objects to the question, as it is immaterial whether it does or not, unless it injures the City of Philadelphia—the question referring only to damage to an individual citizen.]

*Ans.*—It would be necessary to change the North line of the South wharf from that point “38.11” so as to preserve the forty feet opening for the Creek. The extension of the South line parallel therewith would cover the front of the adjoining wharf on the South, as it now exists. If the South line of the adjoining wharf were extended in the same direction, with the same privileges, it would have the same front or nearly so on the Wardens’ line.

*Ques.*—If the same direction were continued all along until the next bend in the River, must not the front of some wharf property be diminished or destroyed?

[Mr. Sheppard objects to the question.]

*Ans.*—It certainly would reduce a wharf front somewhere: and my previous suggestion of that arrangement for the wharves was as a choice of evils—either arrangement would involve an evil to the wharf properties.

*Ques.*—If by Law the owner of the wharf property on the South has no right to extend his lines except in their original direction, would not his wharf front on the present wharf line be entirely destroyed, if the proposed new Pier on the North should be carried out in its proposed direction to the said wharf line?

[Mr. Sheppard objects to the question.]

*Ans.*—If the lines of the property on the South were restricted to a mere prolongation of those lines to the wharf line, then their wharf front would be destroyed by the extension of the proposed new Pier to the wharf line—I mean their future front on the new wharf line.

*Ques.*—I ask you, as a Public Officer, as Chief Engineer and Surveyor of the City of Philadelphia, whether, if the line of the South



wharf should be continued out in its present direction as far as the South-East corner of the proposed new Pier, the proposed new Pier on the North would not encroach, to some extent on the forty feet public highway?

[Mr. Sheppard objects to the question.]

*Ans.*—If that line were continued out and should be shown to be on the confirmed Plan of the District as the line of a street, it then would.

*Ques.*—Is not a short turn in a Creek more difficult to navigate than a long one?

*Ans.*—In entering that Creek, I must say, it would make very little difference whether it were a short or a long curve, provided the angle were not acute.

*Ques.*—As a general rule, is not navigation upon a straight line easier than upon a crooked one?

[Mr. Sheppard objects.]

*Ans.*—Does the question apply to the navigation of canal ditches or or open streams?

*Reply.*—I mean—would not an open stream, straight in its course and channel, be easier to navigate than one with very short and very frequent turns?

[Mr. Sheppard objects as irrelevant.]

*Ans.*—Well, if you were to use a sailing vessel in a straight, open stream, with the wind abaft, a straight stream would be preferable; but for a vessel using a tow rope or push poles, there would be very little difference.

*Ques.*—How would it be with a very long raft in very short turns?

[Mr. Sheppard objects to the question.]

*Ans.*—If the bend was so short, they ought to separate the raft. They are made for that purpose. A bend could be so acute as to create difficulty with a raft. It would depend entirely upon the length of the raft and the acuteness of the bend.

*Ques.*—Are you aware, that some three or four times a year upon an average, freshets clear out from that Creek and from its mouth sediments and deposits, so that, in fact, the channel of the Creek is deeper now than it was some years back?

*Ans.*—I know that there are frequent freshets during the summer, but I do not know what their effect is upon the Creek.

*Ques.*—If the fact should be so, would not that tend to show, that there was no absolute necessity for the proposed change in the lines?

*Ans.*—I have observed that the Creek is bare at low water for some distance up from its mouth. If the channel were deeper than some years ago, there would be no absolute necessity for the change; but it still would be an improvement.

*Ques.*—Are you aware, that all the wharf lines South of Cohocksink Creek and until the next bend, as far out as wharves are at present actually built, run in the same direction with the South line of the wharf on the South side of the Creek.

*Ans.*—I believe they do.

*Ques.*—Do you know of your own personal knowledge that the course of that Creek at its mouth has been changed?

[Mr. Sheppard objects to the question.]

*Ans.*—No—not of my own personal knowledge. I only spoke, judging from the direction.

*Ques.*—Is not the direction of the North line of the wharf on the South of the Creek, actually South of East?

*Ans.*—It is. It is about South  $68^{\circ} 40'$  East.

*Question by Mr. Sheppard:—*

You have stated in your examination in chief, that if the space marked "69.6" were filled up or made a solid wharf, then the effect of the proposed Pier would be to narrow the channel between the said new South wharf and the proposed pier to the extent of about one foot and seven-tenths (1, 7-10). Please take the measurements upon the Plan marked "Exhibit (A)," and state whether the effect of which you have spoken is disclosed by the said Plan?

*Ans.*—The measurement upon the Plan (A) differs from that noted as the measurement of the Plan marked "Exhibit (C)." The channel would not be contracted according to the Plan (A), but would leave three and one half ( $3\frac{1}{2}$ ) feet to spare—making the extreme width from that point at the intersection of the lines marked "69.6" and "38.11" to the said proposed Pier forty-three and one-half feet ( $43\frac{1}{2}$ ).<sup>¶</sup>

*Ques.*—You have stated the course of the North line of the South wharf—can you give us the course of any other of the lines connected with these properties or the channel?



*Ans.*—I can give you the courses of the channel as shown upon “Exhibit (K).” That between Petty’s Island and the City is South  $47^{\circ} 50'$  West. That between Petty’s Island and the Jersey Shore is South  $79^{\circ} 50'$  West.

*Ques.*—In considering the results effected by the junction of the two streams, such as this Creek and the current of the channel in the River, does the inquiry depend upon their absolute directions, or upon their directions relatively to each other?

*Ans.*—The effect is exclusively governed by the angle of their intersections with each other—cardinal points having no bearing upon it.

*Re-cross-examined.*—I do not know which of the two Plans “Exhibit (A)” or “Exhibit (C)” is the more correct.

STRICKLAND KNEASS.

Sworn and subscribed before me, this 18th of March, 1857.

GEORGE JUNKIN, JR., *Examiner*.

Adjourned to Friday, March 27th, 1857, at 3 o’clock, P. M.

Friday, March 27th, 1857, 3 o’clock, met. Present, Mr. Ashmead, Sheppard and Parties.

SAMUEL BOLTON, being duly affirmed on the part of the Respondents, says:

*Ques.*—State whether you are acquainted with the wharf property belonging to the Naglee Estate?

*Ans.*—I am.

*Ques.*—State how long you have been acquainted with it; and whether or not you are now a tenant of the same, and if so, for how long a time?

*Ans.*—I have been well acquainted with it for six (6) years; and have been a tenant for one (1) under a lease for five (5), conditioned for an increase to eight years (8).

*Ques.*—State whether or not you have had opportunities of observing the state of the Creek at different stages of the tide, and at different seasons of the year?

*Ans.*—I have.

*Ques.*—Are there, or are there not bars, or deposits of sediment, at or near the mouth of the Creek, or in the channel above the mouth?

*Ans.*—There are.

*Ques.*—State your knowledge of the same as particularly as you can?

*Ans.*—The sediment forms about the mouth of the Creek; and also in the bed of the Creek above the mouth with what we term “freshets.” They are often accompanied with Easterly storms that generally produce an increase of the tides in the Delaware; and I am of the opinion that in consequence of the wharves immediately above the Naglee property being much farther out in the Delaware than the Naglee Estate, it permits the ebb tide to form an eddy at the mouth of the said Creek, and resists the freshets from carrying the sediment out into the Delaware, which I think would be avoided by the proposed improvement.

*Ques.*—Are these deposits of sediment found practically to be a hindrance in the navigation of the Creek; and if so, please state in what way?

*Ans.*—They are a hindrance; by lessening the draught of water.

*Ques.*—State what means, if any, have heretofore been rendered necessary for obviating the effect of this hindrance?

*Ans.*—We have attempted to improve it—to obviate it by digging, and have spent several hundred dollars, with practically no good result—no continued good result. This has been done by me as tenant and within the last year.

*Ques.*—Are you acquainted with the nature of the proposed extension of the Naglee Pier?

*Ans.*—I am.

*Ques.*—What, in your judgment, would be the effect of that extension, both upon the removal of deposits already formed, and upon the prevention of future deposits?

*Ans.*—I am confident that the effect would be good to the prevention of any increase of deposit. The present deposit, I think, we would remove it, opposite our own property—we design to do so.

*Ques.*—What would be the effect of the proposed extension, if any, upon the facility of entering into and passing from the mouth of the Creek?

*Ans.*—With the exception of its improving the draught of water in the stream it would have no effect.

*Ques.*—By your last sentence do you mean that it would create no difficulty in the passage of vessels?

*Ans.*—I do. It would not create any difficulty.

*Ques.*—Would or would not the proposed Pier, in your opinion, affect injuriously the property owners upon the Creek above its mouth?

*Ans.*—It would not.

*Ques.*—Would it affect injuriously, in your judgment, the navigation of the Creek in any respect?



*Ans.*—Not at all. It would improve it, in my opinion.

Adjourned to April 10th, 1857, at 3 o'clock, P. M.

---

April 10th, 1857, 3 o'clock, P. M. Met. Present, Messrs. Ashmead, Sheppard, and Parties.

Adjourned to Monday, April 20th, 1857, at 3 o'clock, P. M.

---

April 20th, 1857, 3 o'clock, P. M. Met. Present, Messrs. Sheppard, Megargee and witness. Adjourned, on account of Mr. Ashmead's sickness, to Monday, May 4th, 1857, at 3 o'clock, P. M.

---

Monday, May 4th, 1857, 3 o'clock, P. M. Met. Present, Messrs. Ashmead, Sheppard and Parties. Adjourned to Monday, May 11th, 1857, at 3 o'clock, P. M.

---

Monday, May 11th, 1857, 3 o'clock, P. M. Met. Present, Messrs. Ashmead, Sheppard and Parties.

---

Examination of SAMUEL BOLTON, resumed.

*Ques.*—State, if you please, what is the condition of the tide in the Creek at low water?

*Ans.*—At an ordinary stage of low water, the bed of the Creek is nearly bare, and with a Northwest wind entirely so, with the exception of what naturally runs down the stream. With Easterly winds there is more water, from one to two and a half feet, according to the force of the wind.

*Ques.*—What is the length of the Naglee Front along the Creek?

*Ans.*—I am not positive; but from five to six hundred feet, I think.

*Ques.*—If the proposed extension were an injury to the owners of property along the Creek, are there any of them whose property would be more injuriously affected than that of the Naglee Estate?

*Ans.*—I think not. Not near as much. Of course I allude to its effect upon the navigation of the Creek.

*Cross-examined by Mr. Ashmead.*

*Ques.*—You have said that you are a tenant of property on that Creek—Be pleased to state who are your Landlords?

*Ans.*—The Trustees of John Naglee's Estate.

*Ques.*—They are the Defendants in this suit, are they not?

*Ans.*—I presume so.

*Ques.*—Are you to rent from them this proposed wharf if it is carried out?

*Ans.*—In connection with the one we now occupy, we are.

*Ques.*—Would not the proposed extension be an advantage to the Estate of John Naglee?

*Ans.*—I think it would.

*Ques.*—Would not that advantage then tend to counter-balance the disadvantage to the front of the Creek on Naglee's Estate, supposing any disadvantage should arise to the front on the Creek by the proposed improvement?

*Ans.*—Yes, I can say that it would, because we the tenants have agreed to pay an increased rent for the proposed improvement, believing that it would improve the present wharf as well as give us additional room.

*Ques.*—Are you able to say, Sir, positively, that the bed of that Creek is not as deep now as it was fifteen years ago?

*Ans.*—I am not able to say positively. I don't know about it fifteen years ago.

*Ques.*—You have said, that in your opinion the deposits of sediment in the mouth of the Creek are caused by freshets. Have you not observed, after some freshets, that the tendency was to clear away the deposits and again to free the mouth of the Creek?

*Ans.*—Not from the mouth of the Creek, but up along our wharf, and deposit it at the mouth of the Creek. There has been a freshet since I was here last, which lasted a few hours, which has done more to remove the deposits along our wharf than five hundred dollars (\$500) of our money would do.

*Ques.*—Do you know of your own knowledge, whether the proposed extension does or does not run into the Public Highway of Cohocksink Creek?

[Mr. Sheppard objects.]

*Ans.*—Of my own knowledge I know nothing of what would be termed "Cohocksink Creek;" but it would appear to me entirely unnatural to expect Cohocksink Creek to run up to the location of the proposed improvement. What I mean by "up," is up stream.

*Ques.*—Would not the proposed extension create an additional bend in the line of the Creek at the mouth of the Creek?



*Ans.*—I think not at all. What I mean by the Creek, is the natural course of its waters as they would run out into the River.

*Ques.*—My question was a very plain one—I did not ask you anything as to what you might suppose to be the natural course of the Creek; but whether the proposed improvement did not in point of fact create an additional bend at the mouth of the Creek? Please answer that question.

*Ans.*—To the best of my knowledge and belief, it does not—*emphatically*.

*Ques.*—Is that your answer to the question—and do you still persist in your answer with Plan (A), which you are now looking at, before you?

*Ans.*—I do—according to my ideas of the location of the Creek.

*Ques.*—You have said, that at some states of the tide—at low tide—the Creek is entirely bare, with the exception of what naturally runs down the stream—and you have also said, that the freshets did not clear the deposits from the mouth of the Creek, but did clear them along your wharf and deposit them at the mouth of the Creek—Please to explain now how it is, that while by the latter expression you clear away the deposits *above* the mouth and deposit them *at* the mouth, you still have said that the Creek runs bare of water?

*Ans.*—My opinion is—that by the contraction of the two wharves on each side, the water runs down with such rapidity during the time of a freshet, that the current takes the soft deposit with it until the force of that current is broken or terminated at the end of said wharf and the one opposite, and the deposit there forms at or near what I term the mouth of the Creek.

*Ques.*—I am afraid you have not apprehended exactly the meaning of my question. I wish to know from you how it is, that when you have dammed up the mouth of the Creek with these deposits, the water runs out with the tide so as to leave the Creek bare?

*Ans.*—I have not said the mouth of the Creek was dammed up by deposits, but that the deposits flow to the end of the Naglee Estate wharf and the wharf on the opposite side of the Creek, so as to decrease the water to the ends of each Property very considerably since my acquaintance with it.

*Ques.*—I do not mean that you have literally said that the Creek was dammed up, but have you not said, that the freshet decreased the deposits at your wharf, and increased them at the mouth of the Creek?

*Ans.*—I did say so, and by the late freshet it did it to a large extent. With small or ordinary rains the effect is not near so apparent.

*Re-examined by Mr. Sheppard.*

*Ques.*—Please state, what was the effect of the freshet you have spoken of in your cross-examination as having taken place since you were last here?

*Ans.*—The effect was to deepen the channel on our side particularly—and that effect was caused, in my opinion, by several loaded boats on the opposite side of the Creek contracting the current and driving it on our side—the North side; and, in my opinion, had the proposed improvement been down, instead of depositing it at what I term the mouth of the Creek, the said deposit would have been carried out into the current of the Delaware, which I think is now prevented by the wharves above us being so far out as to create an eddy tide.

*Ques.*—What became of the deposit of sediment which you say was removed by that freshet from along your wharf?

*Ans.*—It was deposited above and below or near the end of each wharf at the mouth of the Creek—at the end of the wharves, which I call the mouth of the Creek.

*Ques.*—What is the effect of such deposits upon the navigability of the Creek?

[Mr. Ashmead objects, because it is examination in chief, and not re-examination on the cross-examination.]

*Ans.*—Very little.

*Ques.*—Do you mean that the effect is not prejudicial?

*Ans.*—I mean that it is not prejudicial to the navigation up the Creek, but very much so near the mouth of the Creek. I consider that it improves it up the Creek.

*Ques.*—How would the cause of the formation of deposits at or near the mouth of the Creek as stated in your cross-examination, be affected by the proposed extension?

[Mr. Ashmead objects, because it has already been asked and answered by the witness.]

*Ans.*—The deposits would be prevented.

SAMUEL BOLTON.

Affirmed and subscribed before me, this 11th day of May, A. D. 1857.

GEO. JUNKIN, JR., *Examiner.*

Adjourned to Monday, May 18th, 1857, at 3 o'clock, P. M.



Monday, May 18th, 1857, 3 o'clock, P. M. Met. Present, Mr. Sheppard and parties. Adjourned to Monday, May 25th, 1857, 3 o'clock, P. M.

---

Monday, May 25th, 1857, 3 o'clock, P. M. Met. Present, Mr. Ashmead, Mr. Sheppard, and parties.

*Mr. Sheppard offers in Evidence on behalf of the Respondents :*

A certified copy of a License from the Board of Port Wardens for the Port of Philadelphia, to The Trustees of the Estate of John Naglee, deceased, dated sixteenth day of October, A. D., 1855—hereunto annexed and marked "Exhibit (G) G. J., Jr., *Ex'r.*"

---

Also Deed, Mary Penn by her Attorney in fact Thomas Cadwallader, to John Naglee in fee, dated May 5th, 1812. Recorded in Deed Book I. C., No. 17, page 678 &c., for certain premises mentioned in the answer of the Respondents.

---

Also Deed, Turner Camac and wife, to John Naglee, dated June 5th, 1813. Recorded in Deed Book R. D. W., No. 120, page 242, &c., for certain other premises mentioned in the answer of the Respondents.

---

[The Respondents here close their testimony.]

---

Mr. Ashmead offers in evidence on behalf of the Complainant, a License from the Board of Port Wardens of the Port of Philadelphia to the estate of F. D. Dekker, deceased, dated January 17th, 1853, authorizing the construction of a Pier South of and adjoining the wharf of Henry Stiles, on the South side of the mouth of Cohocksink Creek—as shown upon the Plan heretofore given in evidence, and marked "Exhibit (A) G. J., Jr., *Ex'r.*;" and hereunto annexed, marked "Exhibit (H), G. J., Jr., *Ex'r.*"

---

Also a certified copy by Strickland Kneass, Chief Engineer and Surveyor of the City of Philadelphia, of a portion of the Plan of Third Division of Survey and Regulation of the Northern Liberties made agreeably to Act of Assembly of April 17th, 1795—Surveyed and returned

January 21st, 1809, and of file in the Chief Engineer and Surveyor's office—hereunto annexed, and marked "Exhibit (I), G. J., Jr., Ex'r;" showing the public highway of Cohocksink Creek.

---

Also, Act of Assembly of April 17th, 1795, authorising the Survey and Regulation of the Northern Liberties.

---

Also, Act of Assembly of February 27th, 1797. Digest Laws of the City of Philadelphia, page 142—declaring Cohocksink Creek a Public Highway as to certain portions of it.

---

Also, Act of Assembly of April 16th, 1859. Same Digest, page 143—making Cohocksink Creek in certain other parts of it a Public Highway.

[Complainants close.]

---

Mr. Sheppard on behalf of Respondents gives in evidence—

Acts of Assembly of February 20th 1851, and April 27th, 1852—authorising the construction of a culvert along Cohocksink Creek from the West side of Front street to the East side of Sixth street—and from the East side of Front street to the West side of Sixth street.

---

The Testimony on behalf of Complainant and Respondents here is closed.

GEORGE JUNKIN, JR., *Examiner.*